

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Multicultural Radio Broadcasting Licensee, LLC	)	File Number: EB-09-NY-0314
	)	
Former Licensee of Radio Station WNYG	)	NAL/Acct. No.: 201132380002
Facility ID # 5208	)	
Babylon, New York	)	FRN: 0010 2158 12

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

Adopted: October 22, 2010

Released: October 25, 2010

By the District Director, New York Office, Northeast Region, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we find that Multicultural Radio Broadcasting Licensee, LLC (“Multicultural”), former licensee of station WNYG in Babylon, New York,<sup>1</sup> apparently willfully and repeatedly violated section 73.3526 of the Commission’s Rules (“Rules”)<sup>2</sup> by failing to make available WNYG’s public inspection file at its main studio at any time during regular business hours and by failing to maintain radio issues/programs lists in the public inspection file. We conclude that Multicultural is apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000).

**II. BACKGROUND**

2. On October 27, 2009, an agent in the Enforcement Bureau’s (the “Bureau”) New York Office conducted an inspection of station WNYG at its main studio located at 404 Route 109, West Babylon, New York 11704. The agent conducted the inspection with a Multicultural employee who was at the station and the station’s chief technical officer, who participated by phone. When the agent asked to review the public inspection file, station staff informed the agent that the file had been moved to Multicultural’s main office in Manhattan so that it could be reviewed in connection with a pending lawsuit. The staff told the agent that they would request that the file be returned to the station immediately. The agent advised the staff that he would inspect a co-located station and would review WNYG’s public inspection file if it arrived before he left. A Multicultural employee delivered the public inspection file to the station approximately ninety minutes later, at which time the agent was still on scene. The agent reviewed the public inspection file and observed that there were no issues/programs lists in the public inspection file from the beginning of the station’s most recent license period, which began

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<sup>1</sup> On April 7, 2010, the Commission granted Multicultural’s request to assign the license for WNYG to Radio Cantico Nuevo, Inc. The assignment of the license was consummated on May 26, 2010. See File No. BAL-20100226AEO. Multicultural continues to hold other Commission licenses.

<sup>2</sup> 47 C.F.R. § 73.3526.

on October 19, 2007, when the Commission granted WNYG's most recent license renewal application.<sup>3</sup> The most recent issues/programs list in the public inspection file was dated March 1999.

3. On November 20, 2009, as a follow-up to the inspection, the Bureau issued a Letter of Inquiry (“LOI”) to Multicultural.<sup>4</sup> Among other things, the LOI directed Multicultural to explain why there were no issues/programs lists in the public inspection file at the time of the inspection. In its response to the LOI, Multicultural admits that the file containing the issues/programs lists was not available on the day of the inspection.<sup>5</sup> Multicultural further states that, although the station had regularly broadcast hour-long programming of interest to the community since third quarter 2007, information regarding such programming was not presented in the “proper form” in its public inspection file.<sup>6</sup> Multicultural submitted with its LOI response properly formatted issues/programs lists from third quarter 2007 through second quarter 2009.

### III. DISCUSSION

4. Section 503(b) of the Communications Act of 1934, as amended (“the Act”),<sup>7</sup> provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty. The term “willful” as used in section 503(b) has been interpreted to mean simply that the acts or omissions are committed knowingly.<sup>8</sup> The term “repeated” means the commission or omission of such act more than once or for more than one day.<sup>9</sup>

5. Section 73.3526(a)(2) of the Rules requires broadcast stations to maintain for public inspection a file containing materials listed in that section.<sup>10</sup> Section 73.3526(b)(1) of the Rules requires that a hard copy of the public inspection file shall be maintained at the main studio of the station, and section 73.3526(c)(1) states that the file shall be available for public inspection at any time during regular business hours.<sup>11</sup> In addition, section 73.3526(e)(12) of the Rules requires AM and FM broadcast licensees to place in their public inspection file, for each quarter, a list of programs that have provided the

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<sup>3</sup> See File No. BR20060131BHJ, granted October 19, 2007.

<sup>4</sup> Letter from Daniel W. Noel, District Director, New York Office, Northeast Region, Enforcement Bureau, to Multicultural Radio Broadcasting Licensee, LLC, dated November 20, 2009.

<sup>5</sup> Letter from Arthur S. Liu, President, Multicultural Broadcasting Licensee, LLC, to Daniel W. Noel, District Director, New York Office, Northeast Region, Enforcement Bureau, dated January 4, 2010, at 2.

<sup>6</sup> *Id.* at 1.

<sup>7</sup> 47 U.S.C. § 503(b).

<sup>8</sup> Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under section 503(b) of the Act, provides that “[t]he term ‘willful’, when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act...” See, e.g., *Southern California Broadcasting Co.*, Memorandum Opinion & Order, 6 FCC Rcd 4387 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992).

<sup>9</sup> Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under section 503(b) of the Act, provides that “[t]he term ‘repeated’, when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.”

<sup>10</sup> 47 C.F.R. § 73.3526(a)(2).

<sup>11</sup> 47 C.F.R. §§ 73.3526(b)(1), 73.3526(c)(1).

station's most significant treatment of community issues during the preceding three month period.<sup>12</sup> This list is known as the radio issues/programs list.

6. As discussed above, on October 29, 2009, in response to an FCC agent's request to inspect WNYG's public inspection file during normal business hours, the station was unable to make the public file immediately available. Multicultural staff admitted that the file had been removed from the main studio and temporarily moved to Multicultural's main office for review, but stated that it would be returned immediately. As a result, the agent was unable to inspect the public file until ninety minutes after the request for inspection. The agent found upon review of the file that it did not contain an issues/programs list for any quarter during the current license term. Multicultural was required to maintain in WNYG's public inspection file all quarterly radio issues/programs lists since the grant date of the latest WNYG renewal application, October 19, 2007. The fact that Multicultural provided the issues/programs lists in response to the LOI does not remedy the fact that the quarterly lists were not available on the day of the inspection.<sup>13</sup> Thus, based on the evidence before us, we find that Multicultural apparently willfully and repeatedly violated section 73.3526 of the Rules by failing to make available WNYG's public inspection file at its main studio at any time during regular business hours and by failing to maintain and make available the radio issues/programs lists in the public inspection file on the day of the inspection.

7. Pursuant to the Commission's *Forfeiture Policy Statement* and section 1.80 of the Rules, the base forfeiture amount for violation of the public inspection file rule is \$10,000.<sup>14</sup> In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in section 503(b)(2)(E) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.<sup>15</sup> Applying the *Forfeiture Policy Statement*, section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Multicultural is apparently liable for a forfeiture in the amount of \$10,000.<sup>16</sup>

#### IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Communications Act of 1934, as amended, and sections 0.111, 0.311, 0.314 and 1.80 of the Commission's Rules, Multicultural Radio Broadcasting Licensee, LLC is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of ten thousand dollars (\$10,000) for apparently willfully and repeatedly violating section 73.3526 of the Rules.<sup>17</sup>

9. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's Rules, within thirty days of the release date of this *Notice of Apparent Liability for Forfeiture*, Multicultural Radio

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<sup>12</sup> 47 C.F.R. § 73.3526(e)(12).

<sup>13</sup> See *AT&T Wireless Services, Inc.*, Forfeiture Order, 17 FCC Rcd 21866, 21875-76 ¶¶ 26-28 (2002) (no downward adjustment in forfeiture amount where carrier corrected violations only after learning of them from the Commission).

<sup>14</sup> *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997) ("*Forfeiture Policy Statement*"), recon. denied, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

<sup>15</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>16</sup> See, e.g., *R-S Broadcasting, Inc.*, Forfeiture Order, 25 FCC Rcd 107 (Enf. Bur. 2010) (finding that licensee failed to maintain quarterly issues/programs lists in its local public inspection file and reducing licensee's \$10,000 forfeiture to \$5,000 based solely on its inability to pay).

<sup>17</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80, 73.3526.

Broadcasting Licensee, LLC **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

10. Payment of the forfeiture must be made by credit card, check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.<sup>18</sup> If you have questions, please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov). Multicultural Radio Broadcasting Licensee, LLC shall also send electronic notification on the date said payment is made to [NER-Response@fcc.gov](mailto:NER-Response@fcc.gov).

11. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.80(f)(3) and 1.16 of the Rules. The written statement must be mailed to Federal Communications Commission, Enforcement Bureau, Northeast Region, New York Office, 201 Varick Street, Suite 1151, New York, NY 10014 and must include the NAL/Acct. No. referenced in the caption. The statement should also be emailed to [NER-Response@fcc.gov](mailto:NER-Response@fcc.gov).

12. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

13. **IT IS FURTHER ORDERED** that a copy of this *Notice of Apparent Liability for Forfeiture* shall be sent by Certified Mail, Return Receipt Requested, and regular mail, to Multicultural Radio Broadcasting Licensee, LLC and its counsel at their addresses of record.

FEDERAL COMMUNICATIONS COMMISSION

Daniel W. Noel  
District Director  
New York Office  
Northeast Region  
Enforcement Bureau

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<sup>18</sup> See 47 C.F.R. § 1.1914.